

## Message Text

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ACTION DLOS-05

INFO OCT-01 ISO-00 AF-06 ARA-06 EA-06 EUR-12 NEA-09 FEA-01

ACDA-05 AGR-05 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00

CIEP-01 OFA-01 COME-00 DODE-00 DOTE-00 EB-07 EPA-01

ERDA-05 FMC-01 H-02 INR-07 INT-05 IO-10 JUSE-00 L-02

NSAE-00 NSC-05 NSF-01 OES-03 OMB-01 PA-01 PM-03

PRS-01 SP-02 SS-15 TRSE-00 OIC-02 /139 W

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R 151310Z APR 75

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INFO USMISSION USUN NEW YORK

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C O N F I D E N T I A L SECTION 2 OF 2 GENEVA 2588

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FROM USDEL LOS

B. EVENSEN GROUP: RECEPTION OF RESULTS OF PRIVATE  
NEGOTIATIONS ON THE ECONOMIC ZONE WITHIN THE EVENSEN  
GROUP LIE AT THE HEART OF CONFERENCE OUTCOME. EVENSEN  
IS UNDER GREAT PRESSURE TO SURFACE A DRAFT IN ORDER TO  
SPEED NEGOTIATION AND OFFSET RISING CURRENT OF UNREST  
IN GROUP OF 77. THE EVENSEN GROUP HAS COMPLETED WORK  
ON MAIN ARTICLES AND ON A NUMBER OF FISHERIES ARTICLES  
WITH MAJOR EXCEPTION OF THOSE ON TUNA WHICH ARE STILL  
BEING NEGOTIATED. THE OVERALL BALANCE CONSTRUCTED IS  
ESSENTIALLY ONE BETWEEN COASTAL AND MARITIME INTERESTS,  
AND THE GROUP HAS BEEN UNABLE TO AGREE ON INCREASINGLY  
INSISTENT QUESTION OF ACCESS OF LANDLOCKED AND GEO-  
GRAPHICALLY DISADVANTAGED STATES TO FISHERIES IN ECONOMIC  
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ZONE OF THEIR NEIGHBORS. HOPEFULLY COMMITTEE I

BUREAU TEXT WILL PROVIDE MEANS OF INCLUDING EVENSEN TEXTS WITHOUT INCURRING RESENTMENT AT THEIR AUTHORSHIP AND HOPEFULLY WITHOUT DISTORTING CAREFUL COMPROMISES THAT HAVE BEEN REACHED. IN VIEW OF CIRCULATION OF AFRICAN TEXT WHICH MOVED STRONGLY TOWARD ACCOMMODATION OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES, BUT IS OTHERWISE STRONGLY COASTALLY ORIENTED, KEY TO OUTCOME WILL BE DEGREE TO WHICH CHAIRMAN WILL ADOPT AS HIS OWN THE EVENSEN TEXT OR MOVE TOWARD GROUP OF 77 POSITION. SINCE FORTHCOMING AFRICAN APPROACH TO LAND-LOCKED INTERESTS IS NOT LIKELY TO BE ACCEPTABLE TO A NUMBER OF LATINS, CHAIRMAN COULD WELL ADOPT EVENSEN TEXT ALONG WITH A MORE MODERATE ARTICLE ON THIS ISSUE WITH WHICH SOME EUROPEANS ALSO HAVE EXTREME DIFFICULTIES. IF THIS SCENARIO IS FOLLOWED, CHAIRMAN OF C-II WOULD NEGOTIATE TEXT PRIVATELY WITH CONFERENCE LEADERS AND THEREAFTER ON A BROADER BUT STILL INDIVIDUAL AND PRIVATE BASIS WITH MEMBERS OF REGIONAL GROUPS. APART FROM THE GENERAL PROBLEM OF BALANCE OF MARITIME, COASTAL, AND LANDLOCKED INTERESTS, A NUMBER OF KEY ISSUES ARE UNRESOLVED, INCLUDING ARTICLES ON TUNA AND JURISDICTION OVER THE MARGIN BEYOND TWO HUNDRED MILES.

B. ANADROMOUS AND HIGHLY MIGRATORY PROVISIONS: THE DRAFT IN THE EVENSEN GROUP ON ANADROMOUS SPECIES WHICH IS THE RESULT OF EXTENSIVE NEGOTIATIONS BETWEEN SALMON PRODUCING AND SALMON FISHING STATES SHOULD BE RELATIVELY NONCONTENTIOUS IF NOT OPPOSED ON DOCTRINAL GROUNDS BY AFRICANS. THE ARTICLE ON HIGHLY MIGRATORY SPECIES IS MORE DIFFICULT. EVENSEN'S STAFF HAS INDICATED THAT THEIR INCLINATION IS TOWARD A MORE COASTALLY ORIENTED ARTICLE. INTENSIVE NEGOTIATIONS CONTINUE.

C. CONTINENTAL MARGIN: BROAD MARGIN STATES HAVE MADE CLEAR THAT JURISDICTION OVER THE MARGIN IS AN ESSENTIAL OBJECTIVE AND WHILE SUBSTANTIAL OPPOSITION REMAINS TO ANY EXTENSION OF JURISDICTION BEYOND 200 MILES, A COMPROMISE INVOLVING REVENUE SHARING BEYOND 200 MILES APPEARS TO BE ONLY WIDELY SUPPORTED COMPROMISE TEXT THAT CAN BE ACHIEVED. TECHNICAL DISCUSSIONS  
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ON MEANS OF DETERMINING EDGE OF MARGIN HAVE GONE AS FAR AS THEY CAN GO WITHOUT POLITICAL ACCOMODATION.

4. COMMITTEE III: MARINE SCIENTIFIC RESEARCH:  
QUESTION OF CONSENT REGIME VS OBLIGATION IS FOUNDERING TO SOME EXTENT ON DOCTRINAL PERCEPTION OF NATURE OF COASTAL STATE RIGHTS IN ECONOMIC ZONE. MAIN EVENT IN SCIENCE NEGOTIATIONS THUS FAR HAS BEEN A NEW SOVIET PROPOSAL WHICH ABANDONS CONSENT REQUIREMENT FOR SHELF

RESEARCH AND REQUIRES CONSENT FOR "RESEARCH RELATED TO THE EXPLORATION AND EXPLOITATION OF THE LIVING AND NON-LIVING RESOURCES OF THE ZONE" AND PROVIDES FOR AN OBLIGATION REGIME FOR NON-RESOURCE RELATED RESEARCH. THIS DISTINCTION HAS ELICITED A GREAT DEAL OF INTEREST AND ADDITIONAL INFORMAL TEXTS WHICH DRAW UPON THE SOVIET DISTINCTION WITH VARIABLES. INFORMAL REPORTS INDICATE THAT THE GROUP OF 77 HAS NOT AS YET EITHER ACCEPTED OR REJECTED SUCH A DISTINCTION, ALTHOUGH THE AFRICAN DRAFT ON THE ECONOMIC ZONE GIVES TO COASTAL STATE AUTHORITY TO REGULATE SCIENTIFIC RESEARCH IN ECONOMIC ZONE. WE BELIEVE THAT WE MUST BE PREPARED TO NEGOTIATE ON THE BASIS OF SUCH A DISTINCTION IF WIDESPREAD SUPPORT DEVELOPS FOR IT.

5. COMMITTEE III - MARINE POLLUTION:

A. IN GENERAL, COMMITTEE III HAS WORKED ON LESS CONTROVERSIAL ENVIRONMENTAL ISSUES WHILE AWAITING EVENSEN GROUP NEGOTIATIONS ON CRITICAL VESSEL POLLUTION AND DOUBLE STANDARD ISSUES WHICH ARE EXPECTED TO BEGIN APRIL 16. ALTHOUGH NO SUBSTANTIAL NEGOTIATIONS HAVE YET TAKEN PLACE ON ISSUE OF VESSEL SOURCE POLLUTION STANDARD SETTING AND ENFORCEMENT, THE TREND APPEARS TO BE IN FAVOR OF ACCEPTANCE OF INTERNATIONAL STANDARD SETTING WITH COASTAL STATE ENFORCEMENT IN AT LEAST PORTION OF THE ECONOMIC ZONE AS WELL AS PORT STATE-FLAG STATE ENFORCEMENT, COUPLED WITH SOME "HAZARDOUS AREA" EXCEPTION. NJENGA (KENYA) HAS SAID THAT HE DOES NOT FAVOR COASTAL STATE STANDARD SETTING AND IS CONCERNED WITH COASTAL STATE ENFORCEMENT RIGHTS.

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B. GROUP OF 77 CONTINUES TO MEET PRIVATELY IN ATTEMPT TO PRODUCE THEIR TEXT ON ENVIRONMENTAL ISSUES. POSSIBILITY OF COMPLETING POLLUTION TEXT AT COMMITTEE LEVEL BY MAY 10 HINGES ON OUTCOME OF EVENSEN GROUP DISCUSSIONS. WITHIN COMMITTEE, CANADA CONTINUES TO PUSH FOR BROAD AUTHORITY BUT APPEARS TO BE MAKING LITTLE HEADWAY IN GROUP OF 77. PRIVATE DISCUSSIONS WITH DEVELOPING COUNTRIES INDICATE CONSIDERABLE WILLINGNESS TO AVOID COASTAL STATE STANDARD-SETTING IN THE ECONOMIC ZONE EXCEPT IN CERTAIN AREAS WHERE SPECIAL PROBLEMS EXIST AND THERE APPEARS TO BE WIDE DEVELOPING COUNTRY SUPPORT FOR COASTAL STATE ENFORCEMENT OF INTERNATIONAL STANDARDS IN ECONOMIC ZONE. RECENT PUBLIC AND PRIVATE STATEMENTS INDICATE GROWING SUPPORT FOR US PORT STATE ENFORCEMENT ARTICLE AMONG GROUP OF 77 SO LONG AS IT IS A SUPPLEMENT TO AND NOT AN ALTERNATIVE TO COASTAL STATE ENFORCEMENT.

C. ON OCEAN DUMPING, ALMOST ALL STATES FEEL THIS IS A SEPARATE ISSUE AND THAT COASTAL STATE MUST BE ABLE TO CONTROL IT IN ITS ECONOMIC ZONE.

D. DOUBLE STANDARD: SOME PRIVATE DISCUSSIONS INDICATE A DESIRE TO APPROACH QUESTION USING CONCEPT OF DUE DILIGENCE AND ISSUE WILL BE DISCUSSED IN EVENSEN GROUP.

E. CONTINENTAL SHELF STANDARDS: PRIVATE DISCUSSIONS INDICATE WIDE-SPREAD POSITION THAT STATES WILL NOT AGREE TO BE FORCED IN ADVANCE TO COMPLY WITH INTERNATIONAL STANDARDS SET BY A SUBSEQUENT CONFERENCE. US INTENDS, IF NECESSARY, TO ATTEMPT TO ACHIEVE AGREEMENT TO COMPLY WITH "GENERALLY ACCEPTED" INTERNATIONAL STANDARDS.

F. ENVIRONMENTAL ASSESSMENT: US PROPOSAL URGING ENVIRONMENTAL ASSESSMENTS AND CONSULTATIONS ON PLANNED ACTIVITIES WITH SIGNIFICANT POLLUTION RISK WERE AGREED AT SMALL PRIVATE NEGOTIATING GROUP OF COMMITTEE II BUT STILL REQUIRES CONSIDERATION IN WORKING GROUP ON POLLUTION.

6. DISPUTE SETTLEMENT: COMPULSORY DISPUTE SETTLEMENT  
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PROCEDURES ARE CONTINGENT BY MANY IN GROUP (INCLUDING US) AS APPLYING TO ALL ASPECTS OF FINAL TREATY SUBJECT TO CERTAIN EXCEPTIONS WITH POSSIBILITY OF SPECIAL PROCEDURES FOR FISHING AND FOR DEEP SEABEDS EITHER AS PRELIMINARY OR ALTERNATIVE MEANS. ON THE OTHER HAND OTHERS FAVOR A "FUNCTIONAL APPROACH": SPECIFIC PROCEDURES FOR SPECIFIC ARTICLES WITH NO REPEAT NO AGREEMENT ON BLANKET CDS. THE USSR FAVORS A TRIBUNAL FOR DEEP SEABEDS ONLY, ARBITRATION FOR FISHERIES AND NOTHING ELSE AT THIS STAGE. FRANCE HAS PROPOSED SEPARATE COMMISSIONS FOR FISH, POLLUTION AND SCIENTIFIC RESEARCH MATTERS. A TRIBUNAL FORM OF DISPUTE SETTLEMENT IN ECONOMIC ZONE IS OPPOSED BY TANZANIA AND INDIA AND SOME OTHER LDC'S WHILE OPPOSITION TO BINDING DISPUTE SETTLEMENT IN GENERAL IN ECONOMIC ZONE CONTINUES FROM ARGENTINA, BRAZIL AND HONDURAS. IT IS HOPE THE ACTIVE ROLE OF ADEDE (KENYA) WHO HAS REPLACED GALINDO POHL AS CO-CHAIRMAN OF GROUP, WILL HELP SOLIDIFY AFRICAN SUPPORT. IN AN EFFORT TO REACH A COMPROMISE ON FORM OF CDS, WORKING GROUP TENTATIVELY AGREED ON PROCEDURES WHICH WOULD ALLOW CONTRACTING PARTY TO DECLARE WHETHER IT ACCEPTS THE JURISDICTION OF AN ARBITRAL TRIBUNAL, LOS TRIBUNAL, OR ICJ, OR ANY TWO OR THREE OF THEM. COMPROMISE ARTICLES HAVE NOT BEEN DISCUSSED IN DETAIL AND ARE BEING REVISED.

INTRODUCTION BY AUSTRALIAN DEL LAUTERPACHT OF IDEA OF  
COMPULSORY CONCILIATION WHICH INITIALLY RECEIVED  
SUBSTANTIAL SUPPORT CAUSED SLOWDOWN IN PROGRESS OF  
GROUP AND REPRESENTED MAJOR THREAT THAT ONLY CONCILIA-  
TION AND NOT BINDING DISPUTE SETTLEMENT WOULD ULTI-  
MATELY EMERGE.

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NOTE BY OC/T: NOT PASSED ALL DIPLOMATIC POSTS.

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\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* UNCLASSIFIED

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 15 APR 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** greeneet  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
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**Disposition Remarks:**  
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**Executive Order:** n/a  
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**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
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**Page Count:** 5  
**Previous Channel Indicators:** n/a  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** greeneet  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 18 JUN 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <18 JUN 2003 by BoyleJA>; APPROVED <30 OCT 2003 by greeneet>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
05 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** <DBA CORRECTED> gwr 971002  
**Subject:** LOS: CLASSIFIED MID-SEASON SUMMARY FOR ENDING APRIL 10 COMMITTEE MEETINGS  
**TAGS:** PFOR, HK  
**To:** A  
HONG KONG  
STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006